IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

OP.No. 2828 of 1996(J)

PETITIONER:
---

1. DR.P.D. VIDHYADHARAN, S/O. P.K. DAMODARAN, PARUTHIYAZHATHU HOUSE, ELAMKUNNAPUZHA, COCHIN TALUK.

2. DR. P.D. SREEDHARAN, S/O.P.K. DAMODARAN, DO. DO.

BY ADV. SRI.S.K.BRAHMANANDAN
SRI.G.S.PRABHU
SRI.VINOD J.DEV
SRI.S.B.PREMACHANDRA PRABHU

RESPONDENTS:
---

1. THE DISTRICT COLLECTOR, ERNAKULAM.

2. THE SUB COLLECTOR (R.D.O.), FORT COCHIN, COCHIN-11.

3. THE TAHSILDAR, TALUK OFFICE, COCHIN.

4. THE STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, GOVT. OF KERALA, TRIVANDRUM.

BY GOVERNMENT PLEADER SHRI GOVINDAN C.K.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.5028/96

DISMISSED.

13.11.2007 SD/- T.R. RAMACHANDRAN NAIR, JUDGE,.

APPENDIX

EXT.P1-TRUE COPY OF THE ASSESSMENT ORDER PASSED BY R3. DATED 9.3.1994

EXT.P2-TRUE COPY OF THE DEMAND NOTICE ISSUED BY R3 DATED 9.3.1994

EXT.P3-TRUE COPY OF APPEAL FILED BY THE PETITIONERS BEFORE R2

EXT.P4-TRUE COPY OF ORDER PASSED BY R2 DATED 16.6.1994

EXT.P5-TRRUE COPY OF REVISION PETITION FILED BY THE PETITIONERS BEFORE R1 DATED 18.7.1994

EXT.P6-TRUE COPY OF THE ORDER PASSED BY R1 DATED 9.11.1995.

// TRUE COPY //

P.S. TO JUDGE

T.R.RAMACHANDRAN NAIR, J.

= = = = = = = = = = = = = = = = = =

O.P.No. 2828 of 1996-J.

= = = = = = = = = = = = = = = = = =

Dated this the 13th day of November, 2007.

J U D G M E N T

Petitioners are aggrieved by the orders of assessment passed under the Building Tax Act namely, Exts.P1, P4 and P6. The short facts are the following:

The petitioners are brothers. They are Allopathic Physicians and are running a Hospital by name Nadakkal Hospital at Elamkunnapuzha. They together constructed a two storeyed building in Survey No.254/4, 2168/4, 253/4 and 270/4 of Elamkunnapuzha Village. The ground floor of the said building was completed in 1988 and the petitioner submitted a return to the 3rd respondent for assessment of the building tax under the Act. The assessment was completed and the capital value of the ground floor and the first floor of the building and the tax was assessed to Rs.8,000/- as per order dated 19.11.1988. The petitioner challenged the same before the 2nd respondent. It was contended by the petitioners that only the ground floor was completed and the first floor was yet to be completed even on the date of the assessment order. The 2nd respondent after setting aside the order of assessment remanded the matter holding that the first floor construction was not over as

on the date of the assessment and effectively a reassessment was ordered. The said order is No.K.Dis.306/89/G dated 18.6.1991.

2. Pursuant to the notice issued by the assessing authority, the petitioners appeared before him and adduced evidence in support of their case. It is pointed out in the writ petition that the matter was heard by the 3rd respondent on 28-9-1991 and thereafter nothing was heard for about 2 ½ years. Meanwhile the act was amended by Kerala Building Tax (Amendment) Act of 1992 by substituting Section 5 entirely and the basis of assessment of the building tax was changed from the capital value to the plinth area of the building. While the matters stood so, the petitioners received order dated 9.3.1994 whereby the assessment was finalised on the basis of the plinth area of the building. The tax payable was fixed at Rs.40,800/-. Ext.P2 is the demand notice issued pursuant to the order as per Ext.P1. Petitioners challenged the same in appeal as per Ext.P3 which was dismissed, according to the petitioners, without hearing them, as per Ext.P4. Again the revisional remedy was invoked as per Ext.P5 which was also dismissed by Ext.P6. These orders are under challenge in this writ petition.

3. Heard the learned counsel for the petitioners and the learned Government Pleader.

4. It is brought to my notice that the legal position as regards the

procedure for finalising the assessment in such cases is explained by various decisions of this Court ie., *Shamsudeen v. Tahsildar* (2005(1) KLT 290, A*bdul Rasheed v. Tahsildar* (2005(2) KLT 819) and *Shirly v. State of Kerala* (2006(2) KLT 306).

5. The learned Single Judge in Shamsudeen v. Tahsildar (2005(1) KLT 290) held that if the the construction was completed and the assessment was initiated before the appointed day the assessment as per the amended provisions is contrary to law. It was held that in such cases the matter falls under the purview of Section 5(2) of the Kerala Building Tax Act, 1975. The matter is now concluded by the decision of the Division Bench reported in Shirly v. State of Kerala (2006(2) KLT 306). The Division Bench held as un-constitutional Section 5(2) of the Act and declared that the assessing officer has to complete the assessment on the basis of the law prevailing as on the date of completion of the construction of the building. In that view of the matter, orders of assessment Ext.P1 which was confirmed in Exts.P4 and P6 are illegal. The 3rd respondent is directed to finalise the assessment as per the law which was prevailing on the date of completion of the construction of the building. The same shall be done within three months from the date of production of a copy of this judgment. The 3rd respondent will have to proceed with the matter as directed under the remand order dated 18-6-1991

by the 2nd respondent. Needless to say that the authority will bear-in-mind the principles stated in the various decisions of this Court referred to above.

The Original Petition is allowed as above.

T.R.RAMACHANDRAN NAIR,
JUDGE.

kvs/-